

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) No. 4:18 CR 00975 CDP
v.)
)
DUSTIN BOONE and)
CHRISTOPHER MYERS,)
)
Defendants.)
)

GOVERNMENT'S NOTICE OF NON-EXPERT OPINION TESTIMONY

COMES NOW the United States of America, by and through its attorneys, Sayler A. Fleming, United States Attorney for the Eastern District of Missouri, and Carrie Costantin and Robert F. Livergood, Assistant United States Attorneys for said District, and files this Notice of Non-Expert Opinion Testimony.

Federal Rule of Evidence 701 states that:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Federal Rule of Evidence 701.

Federal Rule of Criminal Procedure 16 does not require the Government to provide notice of testimony under Rule 701. However, out of an abundance of caution, the Government files this Notice of Non-Expert Opinion Testimony.

The Government anticipates that Lindsey Kellis, an FBI staff operations specialist, will testify to the identification of Dustin Boone, Christopher Myers, and Anthony Caruso in photographs taken by Lawrence Bryant on September 17, 2017. Her testimony will explain the basis for her identification. It is not based upon any “scientific, technical, or other specialized knowledge within the scope of Rule 702” and therefore is not subject to Rule 702 expert testimony requirements. Her identification is based on various factors such as facial features, body size and/or shape, possession of a stick or shield, type of helmet, and unique aspects of a uniform. Those characteristics include the placement and design of the word “police,” the tape on the back of officers’ helmets, unique patches, equipment such as flex cuffs or fire extinguishers, asps, baton holders, types of helmets, accessories on belts and whether sleeves are rolled up or down. Identification is also based on the ability to track an individual where photographs are taken within the same second or couple of seconds.

The identification of each person in each photograph is colorized to highlight the identity of that person and copies of the colorized photographs have been provided to defense counsel. Ms. Kellis’ testimony is admissible under Rule 701 because it is “rationally based on the witness’s perception” and “helpful to...determining a fact in issue;” that is, the location of defendants Boone and Myers and witness Caruso immediately before, during and immediately after the charged crimes. Although the jury could also theoretically use the same characteristics to identify the individuals, Ms. Kellis’ identification took many hours of painstaking examination of more than a hundred photographs. Her testimony will be helpful to the jury in determining the location of the individuals in the many photographs.

Respectfully submitted,

SAYLER A. FLEMING
United States Attorney

/s/ Carrie Costantin

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2021, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon counsel of record.

/s/ Carrie Costantin

CARRIE COSTANTIN, #35925MO
Assistant United States Attorney